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FEDERAL COMMUNICATIONS COMMISSION
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HAND DELIVER

William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

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ATTN: 1900/The Review Board

RE: MM Docket No. 94-88, Application of Community Educational
Association for Channel 201A, Holly Hill, Florida (BPED-
930316MF)

Dear Mr. Caton:

On Wednesday, April 19, Central Florida Educational Foundation, Inc. filed both a "Petition for Reconsideration" and a "Petition to Intervene/Petition for Remand" in connection with the above-referenced application. Due to a error in collating the filings in the undersigned's office the first three pages of the "Petition for Reconsideration" were inadvertently substituted for the first three pages of the "Petition To Intervene/Petition for Remand."

An original and 11 copies of a complete "Petition To Intervene/Petition For Remand" is filed herewith.

The undersigned regrets any inconvenience or confusion caused by the error.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

CENTRAL FLORIDA EDUCATIONAL
FOUNDATION, INC.

By: 
Joseph E. Dunne III
Its Attorney

JED:A41

xc: All Per Attached Certificate of Service
James Hoge

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

MM Docket No. 94-88

File No. BPED-930316MF

1. Community Educational Association ("CEA") filed an application for channel 212A (BPED-930316MF) which was mutually exclusive with the application of Cornerstone Community Radio ("CCR"). The two applications were designated for hearing by Hearing Designation Order, DA-789, released August 2, 1994 ("HDO"). In addition to the standard comparative issue CEA also had an air hazard issue and an educational qualifications issue designated

against its application. On August 30, 1994 CEA filed an amendment which removed the mutually exclusivity between the two applications, and by Memorandum Opinion and Order, FCC 94M-521, released September 13, 1994, CEA's amendment was accepted and CCR's application granted. CEA's application remained in hearing status to resolve the issues against its application. CEA's application was granted in Initial Decision of Administrative Law Judge Joseph Chachkin, FCC 95D-4, released March 20, 1995.

2. CEA's August 30, 1994 amendment changed the channel specified in its application from channel 212A to channel 201A. Despite the fact that a change of channel is a major change under section 73.3573(a)(1) of the Commission's rules, requiring both a new file number and a new cut-off date, there was no public notice published of the proposed amendment and, more importantly, no cut-off published which would give CFEF notice of the pendency of what is essentially a new application which could, and as set forth below and in Attachment 2, does adversely impact its authorization.

3. CFEF is the permittee of WEAZ(FM), a non-commercial station on channel 202C2, Union Park, Florida (BMPED-881207MA), with a specified Effective Radiated Power ("ERP") of 1.9 kW. CFEF filed an application to modify its authorization to increase its ERP to 2.5 kW on May 13, 1993 (BMPED-930511MA). CFEF's application was filed on the cut-off date of a mutually exclusive major change application filed by Mims Community Radio, Inc. (BMPED-930113MC).

4. Under section 1.223 of the rules CFEF must show that: its participation would help the Commission resolve contested issues;

it is a party-in-interest; and, why it did not file its Petition to Intervene within the time period specified in section 1.223. CFEF's participation is necessary because the application which the Initial Decision granted would cause prohibited electrical interference to its pending and cut-off application, making the two applications mutually exclusive. See, Engineering Statement, Attachment 2. Grant of CEA's application is contrary to section 73.509(a) of the Commission's rules. CFEF is a "party-in-interest" within the meaning of section 309(d)(1) of the Communications Act of 1934, as amended, because its Petition complains of electrical interference. See, e.g., Rhode Island Television Corporation v. Federal Communications Commission, 116 US App DC 370, 320 F.2d 762 (1963).

5. CFEF could not file its Petition within the time specified by section 1.223 because the act which this petition ultimately seeks to redress did not occur when the application was designated for hearing, but when CEA's major change amendment was accepted by the Presiding Officer, a scant 13 days after it was filed. CFEF was not able to participate earlier because the Commission published no cut-off list giving notice of a major change to a pending application, in fact, it gave no notice of the filing of the amendment to the application at all. Without notice of the filing of the major change to CEA's application CFEF was not in a position to analyze the proposed impact of the major change to its pending application. CFEF's first actual notice of the filing of the CEA's amendment specifying channel 201A rather than channel

212A came when the application was granted in an Initial Decision released on March 20. 1995.

6. As noted in Attachment 2, the grant of CEA's amended application would cause prohibited contour overlap, i.e., proposed electrical interference, to CFEF's pending and cut-off application. CEA's application is, therefore, not compliant with Section 73.509(a) of the Commission's rules and should be denied. Moreover, since the prohibited overlap occurs in an area in which CFEF's authorized signal represents only the second noncommercial service, CEA's proposed interference cannot be characterized either as de minimis or justified by the public interest.

7. Because CEA's amended application was improperly granted, CFEF requests that the Review Board remand the application to the Administrative Law Judge to permit him to consider CFEF's concurrently filed "Petition for Reconsideration," or, in the alternative, deny CEA's amended application as erroneously granted. **WHEREFORE**, the foregoing premises considered, CFEF respectfully requests that it be permitted to intervene and that the above-captioned application of Community Educational Association be remanded to Administrative Law Judge Joseph Chachkin to permit him to reconsider his grant of Community Educational Association's

application for channel 201A, Holly Hill, Florida.

Respectfully Submitted,

**CENTRAL FLORIDA EDUCATIONAL
FOUNDATION, INC.**

By: _____
Joseph E. Dunne III
Its Attorney

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CENTRAL FLORIDA EDUCATIONAL FOUNDATION, INC.

ATTACHMENT 1

PETITION FOR RECONSIDERATION

CENTRAL FLORIDA EDUCATIONAL FOUNDATION, INC.

ATTACHMENT 2

ENGINEERING STATEMENT

CERTIFICATE OF SERVICE

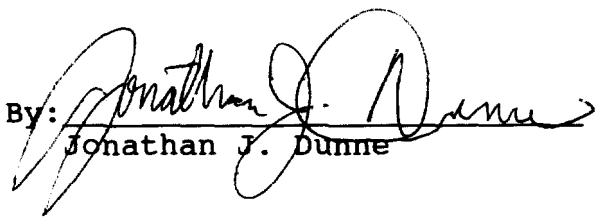
I, Jonathan J. Dunne, a paralegal in the law offices of Joseph E. Dunne III, Esq., hereby certify that on April 24, 1995, I caused the foregoing "Petition To Intervene/Petition for Remand" to be sent, by first class U.S. mail, postage prepaid, to the following:

*The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 226
Washington, D.C. 20554

*Robert A. Zauner, Esq.
Hearing Division, Mass Media Bureau
Federal Communications Commission
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(Attorney For Community Educational Association)

By:


Jonathan J. Dunne

* Hand Deliver